

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

D.M.,

Claimant,

v.

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. 2009040706

A Proceeding Under the
Lanterman Developmental Disabilities
Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Santa Ana on July 10, 2009. The Regional Center of Orange County was represented by Mary Kavli, Fair Hearing Coordinator. Claimant was represented by his mother.

The regional center presented Exhibits 1 – 19. Claimant presented the testimony of the mother and father as well as Exhibits A – B. Both parties presented oral argument.

Oral and documentary evidence having been received, the Administrative Law Judge submits this matter for decision on July 10, 2009, and finds as follows:

ISSUE

The issue presented for decision is whether claimant should continue to receive additional respite hours from the regional center.

FACTUAL FINDINGS

1. Claimant D.M. was born on November 12, 1991, and is 17 years old. He lives with his parents, older brother, and younger sister in the family home in Santa Ana. Claimant has been diagnosed with cerebral palsy, other specified non-psychotic mental disorders, and organic brain damage suffered as a result of an

automobile accident when he was a toddler. Based on his diagnoses and his developmental delays and/or disabilities, claimant is eligible for regional center services from the Regional Center of Orange County (Service Agency) and has received parent-vendored respite services and after-school programming.

2. For the last four years or so, claimant and his family have been receiving 195 hours monthly of In-Home Supportive Services (IHSS) from the County of Orange. The IHSS hours are used for non-medical personal services for claimant, including bowel and bladder care, dressing, bathing and hygiene, medical appointments, and protective supervision. Claimant's mother is the caregiver for claimant's IHSS hours and, as such, she is the payee of the IHSS hours. Claimant also receives Supplemental Security Income and has Medi-Cal health insurance.

3. In July 2008, claimant's mother requested additional parent-vendored respite hours from the Service Agency. At that time, claimant was receiving 24 hours of respite service each month. The mother wanted more respite hours in lieu of the after-school programming because she stated that her son only watched television there and he could do the same thing at home. The mother also complained that she was taking medication to control her anger and was visiting a psychologist weekly. Claimant has a history of aggressive and physical behaviors, tantrums, destructive and self-injurious behaviors, and elopement.

4. (A) At claimant's annual planning team meeting on November 4, 2008, the Service Agency agreed to provide claimant with 25 hours weekly, or 100 hours monthly, of parent-vendored respite in addition to the 24 monthly hours that he was already receiving. The Service Agency granted the additional 100 monthly hours of respite as an exception to its purchase of service guidelines and informed claimant's mother that the authorization for these additional respite hours was valid for six months.

(B) At this annual planning team meeting, claimant's mother reported that claimant had been stable and successfully transitioned to his new school. Still, he was frustrated at school because he believed he was "smarter" than his peers and wanted to be "normal." The mother stated she wanted the additional respite hours so that she could eat breakfast, attend church and bible study, and participate in weekend activities with her daughter. The Service Agency offered behavioral services to the family but the mother declined the service, stating that she had learned all the necessary skills. The Service Agency also explained the facets of a social skills and safety program; the mother indicated she might be interested in these programs for her son. The Service Agency indicated that the family may be able to obtain personal assistance services for claimant in the future.

5. Beginning on or about November 4, 2008, and continuing for the next six months, claimant received a total of 124 hours monthly in parent-vendored respite from the Service Agency. The mother hired her sister, nephew, and niece to perform

respite services for claimant. They take claimant to Target, the 7-Eleven convenience store for “slurpees,” and on walks. They also play video games with him. Claimant has been relatively calm with his family respite caregivers but has wandered off on his own on occasion while in stores. On December 10, 2008, the mother requested another 40 hours per week of respite services. The Service Agency did not grant her request.

6. On April 1, 2009, the Service Agency held a planning team meeting with claimant and his mother to discuss, in part, his respite services. The mother reported that claimant’s school district was planning to hire a personal assistant for him at his new school. The mother indicated that she was using all of the 124 hours of monthly respite to care for her son by herself and that she needed more respite hours.

7. On April 1, 2009, the Service Agency denied the parent’s request for 40 more respite hours and determined to extend the 100 additional hours of respite as an exception to its purchasing service policy only until June 30th and to terminate the additional respite hours at that time. The Service Agency determined that the mother should use the IHSS hours for the support and supervision of her son and also offered to provide claimant with behavioral and counseling services. Claimant’s mother declined the behavioral and counseling services and filed a Fair Hearing Request, asking for continuation of the 100 additional hours of parent-vendored respite.

8. (A) On the Fair Hearing Request and in this proceeding, claimant’s mother contends that her son requires constant supervision and prompting and she needs the additional 100 respite hours per month in order to hire a respite caregiver to watch over claimant for his own safety.

(B) Claimant has a history of eloping from his caregivers when at home, school, and in the community. Once, he ran away at a Target department store and opened game cards without first paying for them. On another occasion, he returned to his former high school and had to be escorted off-campus. Claimant also left his school without permission, bought a “slurpee” at a nearby 7-Eleven convenience store, and returned to school. At home, claimant’s mother prevents her son from eloping by engaging a dead-bolt lock or locks on their home’s door or doors.

(C) In the past year or two, claimant has attended several high schools; he has had to be transferred due to his behavior. Claimant’s mother testified that, last year, she asked for additional respite hours because she began home-schooling her son and needed more respite hours. Since then, claimant has begun attending school at the Cleta Harder Development Center in La Habra, a school that aids children with brain injuries. During the regular school year, claimant takes a bus at 8:00 a.m. to the Cleta Harder Development Center and returns home after school at 3:15 p.m. On June 9, 2009, claimant became upset at school when told he would not be able to go on an outing due to his behavior. He tore papers, tried to kick a door and break a

window, and kicked a hole in a wall. After calming down, claimant cleaned up and returned to class.

(D) In 2004, claimant received behavioral intervention services for temper outbursts or tantrums and demanding behaviors. He had punched and spit at his mother and gestured at his sister with a knife. During the course of the intervention services, claimant made significant progress and stopped engaging in temper outbursts and demanding behavior due to a change in medication and the implementation by his mother of positive behavioral strategies.

(E) Claimant's mother prefers to be the caregiver for the 195 monthly hours of IHSS because she wants to be paid for caring and supervising her son. She takes medications for depression and for aiding her sleep.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

Grounds do not exist under the Lanterman Developmental Disabilities Services Act to grant claimant's request for continuation of the 100 monthly hours of parent-vendored respite.

Under the Lanterman Developmental Disabilities Services Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code § 4502.)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (Welf. & Inst. Code § 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner. (Welf. & Inst. Code §§ 4685, subd. (c)(3) and 4848, subd. (a)(11)) and must be individually tailored to the client (Welf. & Inst. Code § 4648, subd. (a)(2)).

Further, Welfare and Institutions Code section 4648, subdivision (a)(8), provides that the regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for clients receiving regional center services.

Generally, respite care is designed to assist family members in maintaining the client at home, provide appropriate care and supervision to ensure the client's safety in the absence of family members, relieve family members from the constantly demanding responsibility of caring for the client, and attend to the client's basic self-help needs and other activities of daily living. (Welf. & Inst. Code § 4690.2, subd. (a)(1 - 4).)

Effective on September 1, 2008, Welfare and Institutions Code section 4646.4 requires, in part, regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies, utilization of generic services and supports when appropriate. In addition, regional centers must consider the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the client's service and support needs. Regional centers are required to take into account the client's need for extraordinary care, services, and supports and supervision.

Under its Respite Care Services Policy (Exh. 7), the Service Agency determines the number of respite hours through a multi-disciplinary or planning team meeting process, which includes the consumer, his family, and service coordinator, and based on the needs of the consumer and the family. Up to 24 hours per month of respite may be provided if, in pertinent part, the consumer has chronic medical and physical needs, is exhibiting severe challenging behaviors and is a danger to himself and others, or has medical needs that interfere with the sleep of his primary caregiver. Respite up to and in excess of 32 hours per month may be authorized as an exception and on a case-by-case basis and are intended to address time-limited situations and extraordinary or crisis circumstances. Parents are expected to provide the same level of support for their children with developmental disabilities as they would to their children without developmental disabilities.

In the present appeal, the evidence did not demonstrate that claimant's mother or family still needs the 100 additional hours of monthly respite or that claimant's behaviors are so challenging or severe to warrant the additional respite hours. In November 2008, the Service Agency granted claimant the 100 additional monthly respite hours as a time-limited exception to its Respite Care Services Policy because he was spending more time at home. His mother did not want him to attend the after-school program and she also began home-schooling him. As a result, claimant's mother needed relief from the constant responsibility of watching and caring for him at home. Claimant's mother also wanted to do more things for herself. Since then,

claimant has transitioned to a school for brain-damaged children in La Habra where he spends a good part of the regular school day and less time at home. At school, claimant has had at least one behavioral incident but school officials handled the situation appropriately and claimant was able to return to class. At home, the evidence did not show that claimant has been engaging in challenging behaviors that have interfered with the family's activities or sleep or has extraordinary needs requiring additional respite hours for the family. Finally, the IHSS hours that claimant and his mother are receiving constitutes a generic resource that should be used first by the family to provide protective services for claimant. Under these circumstances, the 24 monthly hours of respite that the Service Agency will continue to provide is sufficient to relieve the mother from her caregiving duties.

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Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant D.M. from the determination of the Regional Center of Orange County to reduce monthly respite hours is denied. The decision of the Regional Center of Orange County to reduce claimant's monthly respite hours from 124 hours to 24 hours is sustained.

Dated: July 24, 2009

_____/s/_____
Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.